

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

**R. BRUCE JOSTEN**  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
202/463-5310

January 31, 2013

The Honorable Devin Nunes  
Chairman  
Subcommittee on Trade  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Charles B. Rangel  
Ranking Member  
Subcommittee on Trade  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Nunes and Ranking Member Rangel:

U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, submits these recommendations as you modernize the customs process with the Customs Trade Facilitation and Enforcement Act. The Chamber has reviewed the legislation released in the 112th Congress (H.R. 6642) and we provide these recommendations for the Subcommittee to consider prior to the legislation being reissued in the 113th Congress.

The issues of customs and trade facilitation are critical to the economic competitiveness of American businesses. Removing unnecessary chokepoints to trade facilitates the movement of materials, inputs, and products for our nation's businesses. It also enhances their ability to export to the 95 percent of the world's consumers that live outside of the United States. It is imperative that Congress take steps to advance customs modernization as it will strengthen our businesses' competitive advantage, improve their access to international trade, and promote economic growth.

Below are recommendations for the Customs Trade Facilitation and Enforcement Act. The Chamber highlights these sections of the original bill to provide comments of support, or proposed changes to the legislation.

**Section 102 Officers and Employees, (b) Trade Advocate**

The Chamber views the creation of a Trade Advocate as a positive step to improving U.S. Customs and Border Protection (CBP) interaction with industry. However, it is imperative that this role have the appropriate level of seniority in order to command influence throughout the agency. The Chamber recommends that the legislation be revised to ensure that the Trade Advocate reports directly to the Commissioner with the title Assistant Commissioner.

We would also recommend that the position be a political appointee from outside government with private sector and trade experience that meets all the professional standards

required of members of the Senior Executive Service, including the corresponding Executive Core Qualifications. Lastly, it is appropriate for the Trade Advocate to report to Congress on a yearly basis to discuss the overall goals and strategies being used to implement their trade facilitation agenda.

#### **Section 4 Establishment of Interagency Customs Review Board**

The legislation establishes an Interagency Customs Review Board (CRB), co-chaired by the CBP Commissioner and the Assistant Secretary for Tax Policy in the U.S. Department of Treasury. While the CRB will review regulations as they relate to compliance with U.S. commitments to international trade obligations, it does not have the authority to review regulation on its overall impact on international trade. In many examples, we can find that specific international obligations are not infringed upon. However, it is essential that regulations do not create any new non-tariff barrier to trade. Additional language should be added giving the CRB authority to ensure regulations do not have a negative impact on trade.

#### **Section 201 Consultation with Respect to Mutual Recognition Agreements**

The legislation mandates that CBP must consult with the Congress 30 days before entering a mutual recognition agreement with international supply chain security programs. While we understand the motive behind this section, the Subcommittee is missing an opportunity to encourage international mutual recognition of supply chain security and other customs programs. Adding an additional Congressional reporting mandate does not recognize or encourage the positive steps that CBP is already taking toward building a sustainable international trade facilitation model.

There is great potential in promoting mutual recognition to advance international trade facilitation, and the Chamber recommends adding language to expand these efforts. Congress should use this section to promote improved transparency globally, encourage customs-to-customs exchanges as a mechanism to share, and promote best practices and capacity building for improved customs procedures.

#### **Section 402 De Minimis Value and Entry Under Regulations**

The legislation amends the Tariff Act of 1930 by increasing the de minimis value from \$200 to \$800. It also increases the Informal Entry value from \$1,000 to \$2,500. The Chamber supports these proposals as the increased value will simplify the entry process and reduce transaction costs, particularly for small and medium-sized businesses, thus making them more competitive in the global economy. However, the Chamber maintains the position that a higher de minimis of \$1,000 is the appropriate value and should be included in the legislation.

The de minimis legislation introduced in the House in 2011 (H.R. 1635) has a \$1,000 level and gained the support of 144 co-sponsors. The Peterson Institute for International Economics report on de minimis clearly outlines the additional benefits of the simplification in international trade procedures for products when the de minimis value is at \$1,000. The legislation should also include provisions to increase the de minimis level annually for inflation, based on the yearly increase in the Consumer Price Index.

### **Section 203 Automated Commercial Environment Computer System**

The legislation provides funding to complete the development of Automated Commercial Environment (ACE) and mandates reports and certain benchmarks. The Chamber supports the intent of this section, but recommends the inclusion of a deadline for the completion of ACE. In the last two years, CBP has shown great progress with the program and demonstrated that it can be completed. Congress should place a definitive deadline for CBP to deliver a completed ACE program. It is also critical that Congress provide the appropriate funding for the ACE program so that CBP can retire the Automated Commercial System and the financial offsets of that program can be realized.

### **Section 204 International Trade Data System**

The legislation mandates development of the International Trade Data System (ITDS) as the single window for international trade data transmission. It further prohibits other government agencies from using any other system and mandates covered agencies enter into a memorandum of understanding by March 31, 2013, to provide for information sharing with CBP. The Chamber supports this section as written, as it should provide the momentum needed to ensure ITDS is finalized. The ITDS single window is critical to simplifying international trade for small and medium sized businesses.

### **Section 212 Centers of Excellence and Expertise**

The legislation establishes the Centers of Excellence and Expertise (CEEs) as a program used by CBP to improve enforcement and facilitation. It outlines the structure and responsibilities of the CEEs in their mission. The Chamber supports this section as written and views transitioning the CEEs from a pilot program to a full program of CBP as a positive step for facilitating legitimate trade.

### **Section 231 Exchange of Information Related to Trade Enforcement**

The Chamber appreciates that the legislation contains several provisions regarding the protection of intellectual property rights (IPR), including provisions to improve the flow of information between CBP and rights holders. As the Subcommittee is aware, the importation of products that violate IPR laws is dangerous to American consumers and puts at risk the 55 million jobs in IP-related industries.

We have a set of recommendations in the IPR area addressing the need for additional positions in CBP leadership, additional training capabilities at all ports of entry, specific legal authority for rights holders, and specific recommendations for the current text. Detailed analysis and other recommendations for IPR provisions will be provided to your staff as an annex to this letter by the Chamber's Global Intellectual Property Center.

### **Section 225 Certified Importer Program**

The legislation creates the Certified Importer Program (CIP) as a new partnership program which would provide clearance of participants' shipments immediately upon transmission of entry data. The Chamber would recommend that participation in all trusted shipper programs continue to be voluntary. However, the language in the legislation is critical to ensure that all government agencies operate together to facilitate trade. If we are seeking to promote international harmonization, it is only appropriate that U.S. government agencies work

to present a “one government at the border” approach to trade. Having multiple agencies, with multiple redundant programs and mandates, hurts the competitiveness of U.S. businesses.

### **Section 131 Joint Strategic Plan**

The legislation mandates that the Commissioner of Customs develop a Joint Strategic Plan (JSP) between CBP and Immigration and Customs Enforcement (ICE). It then outlines the appropriate issues that should be addressed in the JSP, including a description and analysis of specific performance measures. The Chamber would recommend adding specific language that establishes organizational benchmarks for optimizing staffing and lowering wait times at ports of entry. CBP should develop and make public a staffing optimization model and then make adjustments to meet industry demand at the border.

### **Section 224 Requirements Applicable to Non-Resident Importers**

The legislation places new mandates on non-resident importers (NRI), including requirements for their registered agent in the United States. Registered agents would be required to pay all duties or penalties if CBP is unable to collect from the non-resident importer. The Chamber has concerns that this new mandate would create a new type of relationship between the importer and the registered agent. The new relationship would increase the cost of importing for any non-resident importer because of the collateral that would have to be put in place. This would in return, increase the expense of international trade. Consequently, we would recommend removing this language from the legislation.

### **Section 202 Commercial Customs Operations Advisory Committee**

The legislation authorizes and outlines the goals and structure of the Commercial Customs Operation Advisory Committee (COAC) and designates the appropriate Department of Homeland Security and Treasury leadership to attend public meetings. The Chamber recommends that the legislation not specify the chairmanship of the COAC public meetings in law. It is instead recommended that this section be removed and report language be inserted that states, “COAC should be co-chaired by at least one representative of the U.S. Department of the Treasury and U.S. Department of Homeland Security, designated by the relevant Secretary at a level at least commensurate with the Commissioner of U.S. Customs and Border Protection and the Assistant Secretary for Tax Policy. Regardless of chairmanship, all COAC meetings should be attended by those representatives.”

The Chamber would also recommend that the legislation include language that mandates CBP host COAC public meetings four times per year. Furthermore, language should be included specifying that the members of COAC are to provide their guidance on all areas of customs practice and work in collaboration with CBP to develop an agenda for all public meetings. Lastly, the Chamber recommends adding language that indicates that an individual’s status as a lobbyist should not exclude him or her from participating in the COAC or serving as a subject matter expert.

### **Passenger Inspection Kiosk Pilot Program**

In an effort to more efficiently utilize CBP Officers at congested airports, the legislation should include the establishment of a pilot program to test passenger data collection kiosks as a part of the primary inspection process. These kiosks will introduce an easier way to manage

processing for travelers by pre-entering their data while they are waiting to be inspected. As a result, CBP officers will be in a better position to focus their efforts on identifying passengers and determining their purpose and intent. CBP officers will be able to handle more passengers because they are no longer performing administrative tasks, which should result in a decrease in passenger wait times.

The Chamber reaffirms our commitment to ensure that a Customs Reauthorization focusing on facilitating legitimate trade and enhancing the competitiveness of U.S. businesses moves forward early in the 113th Congress. The Chamber appreciates the opportunity to submit these comments and looks forward to further action on this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", written in a cursive style.

R. Bruce Josten

cc: Members of the House Committee on Ways and Means